UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

SUNOCO INC. [R&M][1] Employer and PAPER, ALLIED, INDUSTRIAL, CHEMICAL, ENERGY INTERNATIONAL UNION, LOCAL 2-901, AFL-CIO, CLC[2] Petitioner and ATLANTIC INDEPENDENT UNION Intervenor	Case 4–RC–20257

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

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[1] The Employer's name appears as amended at the hearing.
[2] The Petitioner's name appears as amended at the hearing.

3. The labor organizations involved claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer is engaged in the production and sale of petroleum and chemical products at facilities throughout the United States, including Belmont, Exton and Twin Oaks, Pennsylvania. The Employer and the Intervenor are parties to a collective-bargaining agreement covering employees at the Exton facility, including drivers, [3] driver trainers, terminal operators, mechanics, temporary leadermen and driver/garage mechanics. The Employer and the Petitioner are parties to a collective-bargaining agreement at the Twin Oaks facility.[4] The Petitioner seeks to represent a unit of all full-time and regular part-time drivers, garage mechanics, dispatchers[5] and terminal operators at the Exton facility. The Intervenor and Employer agree that the petitioned-for unit is appropriate but they disagree as to the unit placement of six heating oil delivery drivers. Contrary to the Petitioner, the Intervenor contends that the six heating oil delivery drivers currently assigned to the Twin Oaks facility (called herein the Twin Oaks drivers)[6] should be excluded from the unit.[7]

Historically, during the busy winter heating oil season some Exton drivers have made deliveries from other facilities, including Twin Oaks and Belmont, so that the drivers would be closer to their customers. After the winter season, the Exton drivers returned to the Exton facility, where they worked for the remainder of the year. In November 2000, however, six drivers from the Exton facility who were sent to work at the Twin Oaks facility remained there even after the winter season. On about May 24, 2001,[8] Employer representatives Scott Cheek and James Johnson met with John Kerr, the President of the Intervenor, and informed him that these jobs would be permanently transferred from Exton to Twin Oaks. Cheek explained that the Employer was moving 11 million gallons of retail heating oil work to the Twin Oaks facility and was officially laying off the six drivers from the Exton facility and transferring them to the Twin Oaks facility. In response to Kerr's question, Cheek indicated that the Employer would not

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[3] The collective-bargaining agreement refers to the drivers as "chauffeurs."

[4] The record does not specify which employee classifications are included in the unit.

[5] The dispatchers have not previously been included in the Exton unit.

[6] The Twin Oaks drivers at this time are Pat Cawley, James Farrelly, John Hughes, James Mathews, Paul McLaughlin and Robert Whiteside.

[7] The Petitioner and the Intervenor initially disputed the placement of two recently created job classifications, delivery service drivers and delivery oil/gasoline drivers, that work out of the Twin Oaks facility, but they ultimately agreed that both job classifications should be excluded from the unit. The Employer took no position on this issue. Inasmuch as these classifications are based in Twin Oaks, these positions will be excluded from the unit.

At the hearing and in its brief, the Petitioner took the position that the unit should include seasonal drivers. Its attorney stated that the Petitioner was unaware that any seasonal drivers were currently working at the Exton facility, but he believed they likely would be employed during the winter. The Petitioner did not amend the petition to include seasonal employees, and there was no record evidence as to this issue. In the absence of evidence that the Employer employs, or will employ, seasonal employees, they shall not be included in the unit.

[8] All dates are in 2001 unless otherwise indicated.

recognize the Intervenor for that work.[9] By letter dated May 30, Johnson informed Kerr that the Employer was giving 30 days notice of the layoff and transfer of the Twin Oaks drivers. The Intervenor did not grieve this transfer. Since November 2000, the Twin Oaks drivers have reported to Twin Oaks on a daily basis and have rarely had occasion to return to the Exton facility.[10]

Although the Twin Oaks drivers are currently assigned to the Twin Oaks facility, as of the beginning of the hearing in this matter, they continued to be dispatched by the Exton dispatcher, and Exton Terminal Manager Robert Gray has been their supervisor. The Exton dispatcher sends their daily work assignments to the Twin Oaks facility by courier. The next day, the Twin Oaks drivers return their time sheets and work schedules to the Exton facility. The Twin Oaks drivers report to Twin Oaks on a daily basis, make their deliveries and return their trucks to the facility at night. The remaining Exton drivers and the Twin Oaks drivers perform the same types of work and use the same type of trucks. Until the date of the hearing, the Twin Oaks drivers have all reported to Exton Terminal Manager Gray concerning requests for sick leave and vacation time. The Employer, however, has recently created a Twin Oaks heating oil supervisor position and hired a supervisor who began work on August 8, 2001. This individual's duties include supervising the Twin Oaks drivers. He reports to Cheek, who is located at the Twin Oaks facility. Gray testified that the Employer intends to allow all of the Exton drivers to bid on the Twin Oaks driver positions no later than September 1 and that the successful bidders will be covered by the Petitioner's collective bargaining agreement. There is conflicting evidence as to whether the parties have applied the Intervenor's Exton collective-bargaining agreement to the Twin Oaks drivers since their transfer, and the agreement itself is silent on the subject.[11]

While the parties agree as to the appropriateness of the proposed unit, they disagree as to whether the Twin Oaks driver positions should be included in that unit. The record indicates that since November 2000, the disputed drivers have been exclusively assigned to Twin Oaks and have seldom appeared at the Exton facility. In May, the Employer formally laid off these drivers from Exton and subsequently transferred them to Twin Oaks. As these drivers are not located at the Exton facility they no longer have significant community of interest with employees there. See *e.g., Northern Montana Health Care Center,* 324 NLRB 752, 764 (1997*); Bank of America National Trust and Savings Association*, 196 NLRB 591, 593 (1972). Although an Exton supervisor supervised the Twin Oaks drivers for a few months after they transferred, it is undisputed that a new supervisor at Twin Oaks will imminently begin to have authority over them. Thus, the Twin Oaks drivers will no longer share supervision with the Exton employees.

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[9] Article XIV of the collective bargaining agreement between the Intervenor and the Employer, the Layoff provision, requires the Employer to give the President of the Intervenor thirty days written notice of the layoff of an employee with more than one year's service.

[10] Jim Mathews worked out of the Exton facility for about one week in February 2001, and Jim Crawley worked out of Exton for about one week in June 2001. Additionally, Twin Oaks drivers occasionally have picked up product from or had vehicles repaired at the Exton facility.

[11] In this regard, Kerr testified that after the Twin Oaks drivers were laid off from the Exton facility and transferred to Twin Oaks, they were no longer covered by the Intervenor's collective bargaining agreement, but Gray testified that the Twin Oaks drivers remained covered by that agreement. Twin Oaks Terminal Operator Michael Poore testified that the Twin Oaks drivers have not been covered by the Petitioner's collective bargaining agreement at Twin Oaks.

The lack of common supervision between the Twin Oaks and Exton drivers is an important consideration in finding that there is an insufficient community of interest between the two groups. *Harron Communications, Inc.,* 308 NLRB 62, 63 (1992); *Donald Carroll Metals, Inc.,* 185 NLRB 409 (1970).[12] Inasmuch as the Twin Oaks drivers report to a different terminal than the Exton drivers and will be supervised separately, I find that they do not share a sufficient community of interest with the Exton drivers to be included in the unit.[13] Accordingly, I shall exclude the Twin Oaks drivers from the petitioned-for unit.

The Petitioner contends that because the remaining Exton drivers may bid upon the Twin Oaks driver positions, the identity of the drivers who will be stationed at Twin Oaks after September 1 is unknown, and therefore the Twin Oaks drivers should remain in the petitioned-for unit. As the determination of an appropriate unit is based on the job classifications in the unit, not the identity of the individual employees, I find this contention lacking in merit. Individual drivers will be included in the Exton unit if they are in that unit on both the eligibility date and the election date. *Martin Enterprises, Inc*. 325 NRLB 714 (1998); *Plymouth Towing Co.,* 178 NLRB 651 (1969).

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

> **All full-time and regular part-time drivers, garage mechanics, dispatchers and terminal operators employed by the Employer at its Exton, Pennsylvania terminal, excluding office clerical employees, guards and supervisors as defined in the Act.**

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,[14] subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this

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[12] The Petitioner argues that the change of supervision for the Twin Oaks drivers has not yet been finalized and therefore they should remain in the petitioned-for unit. However, as the change of the Twin Oaks drivers' supervision is imminent, I have given it consideration in determining whether the Twin Oaks drivers share a sufficient community of interest with the Exton employees to warrant exclusion from the unit.

[13] The Petitioner cites *Davis Supermarkets, Inc.* 306 NLRB 426 (1992), enfd. 2 F.3d 1162 (D.C. Cir. 1993) for the proposition that employees may be included in a unit although they are not always located at the facility where the unit is based. The Petitioner's reliance on this case, however, is misplaced. In *Davis*, the Board excluded 11 employees from a unit of employees in the Hempfield store although they sometimes worked at that store. The Board found, however, that they spent the majority of their working hours at the Greenburg store, their primary supervisor was at Greenburg, and they were part of an existing bargaining unit at Greenburg. In this case, the Twin Oaks drivers should similarly be excluded from the Exton unit because their primary work location and supervision is at Twin Oaks.

[14] Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

PAPER, ALLIED, INDUSTRIAL, CHEMICAL, ENERGY INTERNATIONAL UNION, LOCAL 2-901, AFL-CIO, CLC;

ATLANTIC INDEPENDENT UNION;

or by NEITHER

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *NLRB v. Wyman–Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the ***full*** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region Four within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **September 17, 2001**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **September 24, 2001**.

Signed: September 10, 2001

at Philadelphia, PA /s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

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